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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/674,758

09/30/2003

Pamela Hardison

06-0320-PHA.RA

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02/02/2011

WILLIAMSON INTELLECTUAL PROPERTY LAW, LLC
1870 THE EXCHANGE, SUITE 100
ATLANTA, GA 30339

EXAMINER

FLICK, JASON E

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

02/02/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/674,758	Applicant(s) HARDISON, PAMELA	
	Examiner JASON FLICK	Art Unit 3763	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 January 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 07 January 2011. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Nicholas D Lucchesi/
 Supervisory Patent Examiner, Art Unit 3763

/JASON FLICK/
 Examiner, Art Unit 3763

Continuation of 11. does NOT place the application in condition for allowance because: The examiner has fully considered applicant's arguments, but they are not persuasive. It is the examiners's opinion that given a careful reading, the claims do not distinguish over the prior art of record. The examiner has given the broadest reasonable definition of the claim elements and the cited prior art (Giacona, III (PGPub 2005/0092789); Chu et al. (PGPub 2004/0225181); and Millen (USPN 6,129,709)) and applicant's arguments fail to convince of an otherwise meaning.

Regarding arguments toward the standing 35 U.S.C. 112, first paragraph, rejection of claims 1, 14, and 22, applicant's representative states the amendments made on 04/06/2010 are supported by the original specification. The examiner respectfully disagrees. Applicant's representative has pointed to page 10, lines 14-20 for support for the amended claims. This portion of the specification does not disclose that the length of material 20 has only one diameter. This section of the disclosure (which supports limitations of claim 7) merely states the splice portion has "substantially the same diameter as the diameter of the length of material." This does not support the claim that the length of material, or the upper and lower portions for that matter, must be the same diameter throughout. There is no such disclosure to that effect; thereby allowing for the length of material to have multiple diameters. In this light, the specification only discloses that the diameter of the splice is substantially the same (although not required to be exactly the same) as a length of material which is capable of having multiple diameters. Based upon the originally filed specification, applicant's representative's argument regarding the inherency of a uniform diameter is unconvincing.

Regarding arguments toward the standing 35 U.S.C. 103(a) rejection of claims 1-19, applicant's representative states Chu does not teach a support apparatus comprising upper and lower sections wherein the material is uniform in diameter. Once again, the examiner respectfully disagrees. As applicant's representative is no doubt well aware, lacking any specific definitions of a particular word or phrase within the disclosure, the examiner has the obligation to give claim elements the broadest reasonable interpretation with regards to the prior art. Applicant's representative's argument appears to rely on a narrowed definition of a circular diameter. However, the definition of a "diameter" (for example, as taught by Merriam-Webster's online dictionary) is merely the length of a straight line through the center of an object. In this light, a diameter is not defined only within circular structures. As previously stated by the examiner, Chu clearly teaches the claim limitations.

Therefore, the arguments as presented by the applicant's representative have failed to convince the examiner. At present, the prior art of record teaches all elements as claimed and these elements satisfy all structural, functional, operational, and spatial limitations currently in the claims. Therefore, the standing rejections are proper and maintained.